

FILED

APR 19 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BENJAMIN LYNN WATTS,

Defendant - Appellant.

No. 03-30228

D.C. No. CR-98-60142-AA
District of Oregon (Portland)

ORDER

On Remand from the United States Supreme Court

Before: LEAVY, THOMAS and FISHER, Circuit Judges.

This case was remanded to this court from the United States Supreme Court for further consideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). The Court sua sponte recalls the mandate. The memorandum disposition filed on June 22, 2004, is vacated.

We cannot determine from the record whether the district court would have imposed a materially different sentence if it had known that the Guidelines were advisory rather than mandatory. Therefore, under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc), we remand for the limited purpose

of making that determination. In fulfilling this mandate, the district court may hold such hearings and enter such orders as it determines to be necessary, including, without limitation, modifying or vacating its previous sentence.

REMANDED.